



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

ciple, the exclusion law could hardly be enforced if the decision were otherwise, and an appeal to the courts allowed in every case. The matter is one peculiarly requiring the summary exercise of executive power.

**THE REQUIREMENT OF PRIVACY IN INTERPLEADER.**—As a general rule, a person beset by adverse claims for the same thing, willing to relinquish it, but in doubt as to who is entitled, may turn the *res* into court and require the claimants to litigate their claims with each other. The wisdom of the rule is apparent since it prevents the vexation of a third party by two suits when the real issue is between the two claimants. The courts, however, have displayed a tendency to narrow its application by imposing some requirements that seem technical and scarcely justified. One of these is the requirement of privity. As understood with reference to interpleader, privity exists if one of the claimants claims through the other or if both claim from a common source. Privity is clearly established where the connection arises by assignment, and, while not always recognized, it is also generally held that the requirement is met if one claimant is entitled as a constructive *cestui que trust* of the other.<sup>1</sup> A recent Illinois case is to be explained on that ground. *Byers v. Samson-Thayer Commission Co.*, 19 Chic. L. J. 753 (Ill., App. Ct.).

It is to be noticed that the question of privity cannot easily arise except in a case where the stakeholder has in his possession a specific chattel. In the case of a debt or obligation, the claimants must necessarily claim through the obligation itself, which ensures privity. A situation may indeed arise in which the claims of the various parties, though different in nature, are nevertheless mutually exclusive. For example, A, claiming to be entitled on a life insurance policy, is given a note in settlement. B then sues the company, claiming to be the beneficiary entitled. In such a case, while it might well be held that a bill in the nature of interpleader should be allowed, a bill of strict interpleader cannot lie,<sup>2</sup> not because of want of privity, but because it is the very essence of interpleader that there must be a dispute as to the same *res*. It follows that the question as to the requirement of privity most often arises when a bailee brings a bill of interpleader.

While there are some cases in which a bailee has been allowed to interplead adverse claimants although no privity existed,<sup>3</sup> yet by the weight of authority it is required.<sup>4</sup> The requirement is believed to have been made on the assumption that a bailee cannot deny his bailor's title. If this assumption were true, as it undoubtedly was in the early law, the fact might afford a reason why interpleader should be denied the bailee, for, since he would be liable to the bailor at all events, his obvious course would be to give the *res* in question to the bailor and defend himself against the other claimant. The more just rule would be to require the bailor, who has placed the bailee in that position, to assume the burden of litigating the actual right to the chattel. If then the bailor failed to establish his right to

<sup>1</sup> *Platte Valley Bank v. Nat'l Life Stock Bank*, 155 Ill. 250. *Contra*, *Third Nat'l Bank v. Skillings Lumber Co.*, 132 Mass. 410; *German Sav. Bank v. Friend*, 20 N. Y. Supp. 434.

<sup>2</sup> *Slaney v. Sidney*, 14 M. & W. 800.

<sup>3</sup> *Roberts v. Bell*, 7 E. & B. 323.

<sup>4</sup> *First National Bank v. Bining*, 26 N. J. Eq. 345.

it, he could be allowed to prosecute his independent right against the bailee in a supplementary hearing. While this is the modern English practice,<sup>5</sup> under the present law elsewhere, whenever it appears that there is even a possibility of liability to both of the claimants the right of interpleader is denied.<sup>6</sup> But it has long since been established that, if the property belongs to another, the bailee may safely deny his bailor's title.<sup>7</sup> The only reason for the requirement of privity, therefore, does not exist. While several of the more recent cases have allowed interpleader though privity was lacking<sup>8</sup> and although disapproval of the requirement of privity has several times been judicially expressed,<sup>9</sup> it is nevertheless unfortunately true that those cases which have expressly considered the question have continued to recognize the rule.<sup>10</sup>

## RECENT CASES.

**ALIENS—CHINESE EXCLUSION ACT—NATURE OF PROCEEDINGS.**—In a proceeding under the Chinese Exclusion Act, the defendant was alleged to be a Chinese person unlawfully within the United States. The only evidence that the defendant was a Chinese person consisted of a confession obtained under such circumstances that it would be inadmissible in a criminal case. *Held*, that the evidence is inadmissible and the defendant must be discharged. *United States v. Hung Chang*, 126 Fed. Rep. 400 (Dist. Ct., N. D. Oh.).

It is well established that the trial of a Chinese person under the Chinese Exclusion Act on the issue whether he is unlawfully within the United States is not a criminal proceeding. *In re Chow Goo Pooi*, 25 Fed. Rep. 77; *Fong Yue Ting v. United States*, 149 U. S. 698. The principal case, however, differs from these cases in that the issue is whether the defendant is a Chinese person, while in them this fact was admitted. It can hardly be contended that the issue is criminal, since an adverse finding will result in a conviction for an offence admittedly not criminal. Nevertheless since the right of a person to remain in this country depends on the result and that person may in some cases be an American citizen, constitutional rights may be involved. Moreover proceedings under the act against one proven a Chinese person are most drastic and summary. It seems then that it is advisable to use all possible safeguards in determining this preliminary step, and at least to treat the question in the manner of a criminal question, though it is not strictly such. This result was reached in a case similar to the principal case. *Ex parte Sing*, 82 Fed. Rep. 22.

**BAILMENT—LIABILITY OF BAILEE FOR ACTS OF SERVANT.**—The plaintiff, a coachbuilder, loaned a carriage to the defendant while the latter's trap was being repaired. The coachman in charge of the defendant's carriage-house, without the permission or knowledge of his master, used the carriage on a frolic of his own and damaged it by his negligence. *Held*, that the defendant is not liable. *Saunderson v. Collins*, 116 L. T. 365 (Eng., C. A.).

For a comment on the contrary decision by the lower court, see 17 HARV. L. REV. 198.

**BANKRUPTCY—JURISDICTION OF STATE COURTS—EXEMPT PROPERTY.**—A creditor had attached property in a state court. The debtor was subsequently adjudicated bankrupt, and his trustee sought to have the attachment dissolved. The creditor resisted on the ground that the chattels attached were exempt property. *Held*, that

<sup>5</sup> *Ex parte Mersey Docks and Harbor Board*, [1899] 1 Q. B. 546.

<sup>6</sup> *National Life Insurance Co. v. Pingrey*, 141 Mass. 411.

<sup>7</sup> *Biddle v. Bond*, 6 B. & S. 225.

<sup>8</sup> *Follet Co. v. Albany Co.*, 61 N. Y. App. Div. 296; *Packard v. Stevens*, 58 N. J. Eq. 489.

<sup>9</sup> *Crane v. McDonald*, 118 N. Y. 648; *Bartlett v. Sultan*, 23 Fed. Rep. 257.

<sup>10</sup> *Goodrich v. Williamson*, 10 Okla. 588.